

CV 639
DHK/JS

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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:
Tom Brady, Drew Brees, Vincent Jackson, Ben : Civil Action No. _____
Leber, Logan Mankins, Peyton Manning, Von :
Miller, Brian Robison, Osi Umenyiora, and :
Mike Vrabel, individually, and on behalf of all :
others similarly situated : Declaration of Frank Bauer
:
Plaintiffs, :
:
vs. :
:
NATIONAL FOOTBALL LEAGUE, et al., :
:
Defendants. :
----- X

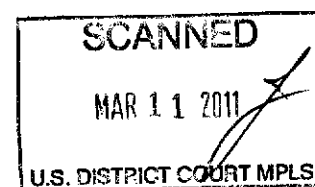
Frank Bauer, declares under penalty of perjury, as follows:

1. I am a player agent with and owner of Sun West Sports & Associates. Since 1982, I have represented over 250 NFL players and have negotiated over 900 contracts.

2. I currently represent named plaintiff Logan Mankins, among other NFL players. I am personally familiar with Mr. Mankins' contract and the interactions and negotiations with NFL teams regarding his services. I submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction.

Logan Mankins

3. Logan Mankins is an offensive lineman, whom the New England Patriots drafted in the first round of the 2005 NFL Draft. Since the 2005 NFL season,



Mr. Mankins has played for the Patriots and has established himself as one of the top offensive lineman in the NFL. In recognition of his superior performance, Mr. Mankins was selected to the Pro Bowl three times and to the First-Team All Pro in 2010.

4. Mr. Mankins has been a professional football player in the NFL since the Patriots selected him in the 2005 NFL draft, and I have represented him for the entirety of that time. As a rookie in 2005, Mr. Mankins signed a five-year contract with the Patriots, which was set to expire at the conclusion of the 2009 NFL League Year. Under the Collective Bargaining Agreement ("CBA") at that time, Mr. Mankins would have possibly had the opportunity to explore his options in the open market as an unrestricted free agent when his contract expired. The CBA, at the time, permitted a player to become an unrestricted free agent upon the expiration of his contract if he had accumulated four years of service under that contract.

5. Due to the NFL's opt-out of the CBA in May 2008, however, the unrestricted free agency threshold of four years was increased to six years. When Mr. Mankins' contract expired at the conclusion of the 2009 NFL League Year, he therefore could not become an unrestricted free agent because he had not yet accumulated six years of service. Consequently, the opt-out locked Mr. Mankins into a tender system of restricted free agency for the 2010 NFL season under which the Patriots enjoyed the unilateral option to retain Mr. Mankins' services under a one-year contract at a cost substantially below his market value.

6. This one-year contract with the Patriots expires on March 3, 2011, at which time Mr. Mankins will not be under contract with any NFL team. He therefore

should be free to negotiate and sign with any team in the NFL. By letter dated February 14, 2011, the Patriots purported to designate Mr. Mankins as a "Franchise Player" under the CBA. A true and correct copy of this letter is attached hereto as Exhibit A. By designating Mr. Mankins as a "Franchise Player," the Patriots are purporting to offer Mr. Mankins a one-year contract for the 2011 NFL season at a set level of compensation and to restrict Mr. Mankins ability to sign a contract with any other NFL team for the 2011 NFL season.

7. After receiving the Patriots' "Franchise Player" designation letter, I spoke with Floyd Reese, the Patriots' Senior Football Advisor, and asked what the precise amount of the one-year contract under the designation would be for Mr. Mankins. Mr. Reese informed me that he did not know what the amount would be and that it would depend on a new CBA. Subsequently, I followed up with Mr. Reese by letter again requesting the precise amount of the one-year contract under the "Franchise Player" designation. A true and correct copy of this letter is attached hereto as Exhibit B.

8. Since 2008, I have had multiple discussions with the Patriots regarding their potential signing of Mr. Mankins to a new long-term contract. The Patriots have repeatedly represented to me that they want to re-sign Mr. Mankins.

9. After the 2008 NFL season, I approached the Patriots about a long-term contract for Mr. Mankins, but I was informed that, due to uncertainty with the CBA, the Patriots were not in a position at that time to extend his contract. Bill Belichick, who coaches the Patriots and has substantial influence over all player personnel decisions, personally assured Mr. Mankins that, after the conclusion of the 2009 NFL season, Mr.

Mankins would have a substantial long-term contract in place. The Patriots contract offers (both after the 2009 NFL season and during the 2010 NFL season), however, have continually been below the market value of a player of Mr. Mankins' caliber. Thus, Mr. Mankins has refused to accept the Patriots' offers and has instead decided to pursue fair market compensation from other NFL teams.

10. If the NFL imposes a "lockout," all NFL teams will refuse to negotiate with Mr. Mankins about potential employment. This includes the Patriots, who have failed to even inform Mr. Mankins what the Patriots are tendering as his "Franchise Player" salary. Nevertheless, even if a "lockout" were later lifted, the Patriots' purported "Franchise Player" designation suggests that other NFL teams will still refuse to negotiate with Mr. Mankins.

Irreparable Harm

11. Mr. Mankins, as well as all other NFL players, will suffer irreparable injury under a "lockout" by the NFL. I know from personal experience as an agent that NFL players' careers, in general, are exceedingly short compared to other professions. I have seen many NFL players leave the NFL after only a short time, and, from my experience, I believe that the average career of an NFL player is less than four years. One important factor contributing to the extremely abbreviated career length for NFL players is the constant risk of career-ending injury. I have seen the careers of numerous players cut short or ended by severe playing injuries, suffered both in games and practice. In addition, the wear and tear on NFL players' bodies associated with just playing in the

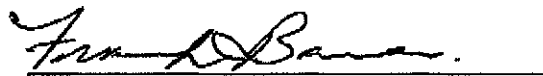
NFL is severe and diminishes the physical capabilities of players over time. I believe these risks are typical for every NFL player.

12. Indeed, a "lockout" will threaten to rob Mr. Mankins, and all other NFL players, of an entire year or more of their brief playing careers, which can not be recaptured. The virtually constant need for NFL players to prove their skill and value on both the game and practice fields makes a "lockout" especially problematic. Missing a year or more of playing in the NFL can cause the skills of NFL players to become rusty from the lack of competition, making it difficult for them to regain the full talents they exhibited prior to the absence from play. This could shorten or even end the careers of NFL players.

13. In addition, for Mr. Mankins and other NFL players not currently under contract, a "lockout" will also deprive them of new contracts that would be negotiated in a free market, whose precise terms will be impossible to recreate.

14. It is my belief that Mr. Mankins, and all other NFL players will not be able to fully recover from the harm they will suffer if they lose even part of an NFL season or off-season as a result of a "lockout."

Dated: March 2, 2011

A handwritten signature in cursive script, appearing to read "Frank Bauer", is written over a horizontal line.

Frank Bauer

EXHIBIT A

FEB-22-2011 14:00

02/22/2011 11:19

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SUN WEST SPORTS

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Feb 14 2011 1:14PM

NEW*ENGLAND*PATRIOTS

5083844210

P.2



FLOYD REESE
SENIOR FOOTBALL ADVISOR

Via: Federal Express Overnight Letter

February 14, 2011

Logan Mankins
1 Mockingbird Lane
N. Attleboro, MA 02760

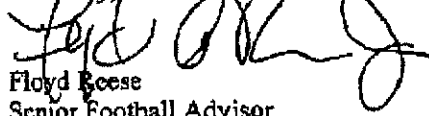
Dear Logan:

This letter serves as notice that the New England Patriots (hereinafter "Club") has designated you as a Franchise Player subject to a Right of First Refusal and Draft Choice Compensation as specified in Article XX, Section 2 (a) (i) of the 2006 Collective Bargaining Agreement (the "CBA").

Based on this designation you are being tendered a one year NFL Player Contract at the average of the five largest Prior Year Salaries for players at the position at which you played the most games during the prior League Year, or 120% of your Prior Year Salary, whichever is greater.

Based on this tender, you shall be permitted to negotiate with any Club as if you were subject to Article XX, Section 5 of the CBA (Right of First Refusal for Transition Players), except that the Club will be entitled to Draft Choice Compensation of two first round draft selections in the event you sign with a new Club and the Club does not exercise its Right of First Refusal.

Sincerely,



Floyd Reese
Senior Football Advisor

cc: NFLPA (202-756-9318)
NFL Player Personnel Department (212-847-1881)
Frank Bauer, Player's Certified Contract Advisor (209-951-3216)



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ADMINISTRATION: 508-543-8200 • TICKETS: 508-543-1776 • WWW.PATRIOTS.COM



EXHIBIT B

FEB-22-2011 14:00

02/22/2011 11:19 2099513215

SUN WEST SPORTS

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Subj: (no subject)
Date: 2/16/2011 1:48:27 P.M. Pacific Standard Time
From: Sws9922@aol.com
To: floydre@patriots.com

February 16, 2011

Floyd Reese
Senior Football Advisor
New England Patriots
Gillette Stadium
One Patriots Place
Foxboro, MA 02035

Dear Mr. Reese,

We are in receipt of your letter dated February 14, 2011 wherein you purport to designate Logan Mankins as a Franchise Player. As time is of the essence, please advise this office immediately of the actual Paragraph 5 amount of the one year fully guaranteed 2011 NFL Player Contract that is referenced in your correspondence. This information is necessary so that my client can make an informed and reasonable decision regarding his future employment and related legal issues.

Very truly yours,

Frank Bauer
President
Sun West Sports & Associates
7883 N. Pershing Ave
Stockton, CA 95207

Thursday, February 17, 2011 AOL: Sws9922